

Testimony of
America's Community Bankers
on
H.R. 2622
“Fair and Accurate Credit Transactions Act of 2003”
before the
Committee on Financial Services
of the
U.S. House of Representatives
on
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Washington, DC

Chairman Oxley, Ranking Member Frank, and members of the committee, my name is D. Russell Taylor. I am President and CEO of The Rahway Savings Institution, a \$375 million, state-chartered, mutual savings bank in Rahway, New Jersey. I am testifying today as chairman of America's Community Bankers (ACB), which represents the nation's community banks of all charter types and sizes.

Thank you for the opportunity to testify today on H.R. 2622, the "Fair and Accurate Credit Transactions (FACT) Act of 2003." ACB fully supports the efforts of the committee and President Bush to focus on two critical elements of FCRA reauthorization: (1) security and accuracy of personal financial information, and (2) access to credit and other financial services. We wholeheartedly endorse H.R. 2622 and urge the House of Representatives to pass this legislation expeditiously.

On June 12, ACB had the opportunity to testify before the House Financial Institutions and Consumer Credit Subcommittee on reauthorizing the Fair Credit Reporting Act (FCRA) and combating identity theft. We are very pleased that the FACT Act reflects many of the policy recommendations in our testimony.

Uniform National Consumer Protection Standards

First and foremost, ACB endorses the permanent reauthorization of the FCRA's uniform national consumer protection standards as provided for in Title I of the FACT Act.

In 1996, Congress set out on a limited, carefully crafted experiment to discover whether uniform national standards would improve our credit granting and reporting system. During its intensive series of FCRA hearings, the House Financial Institutions Subcommittee heard from a broad array of witnesses, including ACB, about the tremendous success of this seven-year experiment.

As these hearings illustrated, the preservation of the uniform national standards embodied in the FCRA are imperative to maintain the efficiency of the U.S. consumer credit markets and the competitiveness of the U.S. economy as a whole. These national standards govern the content and usage of credit reports; define the obligations of institutions that provide information included in these reports; insure consumers have the right to "opt-out" of prescreened credit or insurance offers; and provide for the efficient sharing of information within corporations to serve customers.

These standards ensure that credit information is reported and processed in a consistent manner regardless of where the consumer resides or conducts business. Moreover, in today's highly competitive financial marketplace, the ability of corporations, both large and small, to share information with affiliates is critical to serve customers. The sharing of information among affiliates enables valuable customer service features such as consolidated statements and single-source customer call centers across product lines. Of equal importance, the sharing of information among affiliates can help identify financial transactions that might indicate a customer has become the victim of identity theft.

Often, when people consider the FCRA and affiliate sharing relationships, it is evaluated in the context of large, complex financial institutions. This does not paint the whole picture. For example, the Rahway Savings family of companies includes Rahway Savings as well as the Rahway Savings Insurance Agency. As detailed in our corporate privacy policy, we share limited customer information among these entities to offer our customers the array financial products and services they need to accomplish their financial goals. By sharing limited information among our corporate family, we are able to better understand the total customer relationship and provide our customers with tailored products and customer support.

We are by no means a large financial institution, but the uniform national standards in the FCRA helps small and medium sized companies like mine better serve our customers.

By removing the sunset provisions from these uniform national standards, Title I of the FACT Act will allow community banks, like Rahway Savings, and others to continue making prudent credit decisions quickly and inexpensively wherever a customer may reside or have conducted business. ACB urges Congress to pass Title I of the FACT Act without changes or amendments.

Identity Theft Prevention

While the U.S. system of credit is clearly the most effective and efficient in the world, it is not without its glitches. The rising number of identity theft cases is creating enormous hardships both to consumer victims and community banks. Community bankers are on the front lines of the war against identity theft, and we appreciate the tools provided in Title II of the FACT Act for banks and consumers to use in combating identity theft.

As both a bank executive and a victim of identity theft, I bring a unique perspective to this issue. While the Internet age may have facilitated new scams to pilfer personal data from potential victims, identity theft is not in any way a new crime. I became a victim of identity theft over twenty years ago. Like many victims of identity theft, I first became aware of the crime after receiving a call from a collection agency. In my case, a fraudster had somehow managed to gain enough information on me to obtain credit cards in my name at an address I never lived at. Over the course of several weeks, this individual amassed several thousand dollars of debt in my name purchasing expensive dinners, jewelry, airplane tickets, and other high dollar items.

At the time this crime occurred, I was dealing with a serious family medical crisis and had little time or emotional energy to investigate what had happened and the steps needed to resolve the situation. While I was fortunate enough to have an attorney friend who generously made available their services to help resolve credit problems I did not create, it nevertheless took that attorney many hours of letters and phone calls over the course of several weeks on my behalf to reconcile my credit information.

Title II of the FACT Act establishes an effective framework to institutionalize measures that will help minimize the risk of identity theft and assist identity theft victims. For

example, Section 201 requires that credit card issuers confirm address changes that may indicate potential fraud. These new change-of-address verification procedures appropriately target one of the most prevalent fraud scams in use today whereby an identity thief obtains enough information about a victim to request a change-of-address and subsequently requests a replacement card that is used to perpetrate fraud. In testimony before the House Financial Institutions Subcommittee, the United States Postal Service reported that a similar address verification technique has “virtually eliminated the use of placing a false change-of-address as an avenue for committing identity theft.”

Title II of the FACT Act also establishes a legal framework for processing fraud alerts, ensures information resulting from identity theft does not appear on credit reports, and requires the truncation of credit/debit card numbers on printed items that reflects industry practices. ACB supports these provisions that provide clarity as to the expectations and requirements of all entities involved in the credit reporting process.

ACB is concerned about potentially burdensome new legal liabilities placed on the users of credit reports. Section 202(i)(3) of the FACT Act subjects the users of credit reports to new penalties should credit be granted in the name of a consumer who has an active fraud alert and the credit grantor has not attempted to obtain the authorization of that consumer in the manner contained in the alert.

The credit reporting agencies (CRAs) have for some time included an alert facility in credit reports, allowing consumers to indicate they have been victims of identify theft and to caution lenders that applications for credit could be fraudulent. When a lender receives an application for credit from a consumer who has such an alert on their credit report, the alert serves as a “stop sign” that the lender should take appropriate measures to ensure that the application is legitimate. However, as a user of fraud alerts, I can attest that they have a variable degree of accuracy or completeness, and the verification information provided in a fraud alert will vary significantly. In some situations the lender will be asked to contact the consumer at a verified phone number, while in other cases the information will provide no specific instructions, or the phone number may no longer be active. Lenders should not be bound by specific instructions found in the fraud alert.

Instead, ACB recommends that lenders be permitted to use whatever reasonable and practical measures are appropriate to verify the identity of the person, rather than blindly adhere to the specific instructions found in the fraud alert, which may or may not be complete. Section 202(i)(3) should also be clarified such that the new penalties apply only to credit fraud, and not to legitimate credit applications.

Finally, in our June 12 testimony before the House Financial Institutions Subcommittee, ACB also expressed our support for legislation strengthening sentencing standards for identity theft crimes and aiding prosecutors in proving identity theft. While we continue to support such legislative efforts, we understand that these issues go beyond the jurisdiction of this committee.

Accuracy of Consumer Records

The accuracy of credit report information is the foundation on which our national credit reporting system is built. It is in the best interest of consumers, CRAs, and users of credit reports that information be as accurate as possible, errors be corrected quickly, and consumer identity theft claims be handled in an efficient and timely manner.

In New Jersey, every consumer is already entitled to a free annual credit report, and at Rahway Savings, we make certain that every consumer who applies for a mortgage loan understands what is in his or her credit report. Any potential anomalies are discussed with the applicant to ensure that the customer understands what is contained in his or her credit report in order that he or she receive proper consideration for the loan.

Title IV of the FACT Act imposes new legal requirements on both the furnishers of credit report data and users of credit reports to ensure the accuracy of consumer records. Section 402 requires that furnishers of credit report data ensure that information resulting from fraudulent activity is not knowingly provided to CRAs. In addition, Section 403 requires that users of credit reports who discover fraudulent information in a consumer report would be legally bound to notify the consumer of such fraudulent information. These provisions generally codify existing business practices.

Consumer Dispute Resolution

While the FACT Act places new responsibilities on credit reporting agencies and furnishers of credit report information to ensure the accuracy of credit report data, errors will undoubtedly occur periodically. It is therefore equally important that consumers have the ability to report potential identity fraud situations that may result in inaccurate credit report filings and that all errors are corrected as efficiently as possible. Title III, Section 301 of the FACT Act requires that the Federal Trade Commission (FTC) establish specific procedures for the referral of identity theft and fraud alerts among the consumer reporting agencies and the FTC. Moreover, Section 302 acknowledges the increasingly important role credit report resellers play in the national credit reporting system and empowers resellers to assist in resolving disputed information on credit reports. ACB believes these provisions would result in a significantly less burdensome process for reporting identity theft crimes and allow the reporting and consumer education infrastructure developed by the FTC to better serve victims.

In addition, Section 303 of the FACT Act requires the FTC and the Federal Reserve to conduct a comprehensive study on the effectiveness of the FCRA dispute resolution process. Anecdotal evidence appears to suggest that the speed and consistency with which credit reporting errors are corrected could be improved.

ACB believes the approach taken in this legislation is preferable to enacting overly prescriptive remedies that may have unintended consequences, and we will work with the Federal Reserve and the FTC as they conduct this study.

Consumer Access to Credit Reports

The continued integrity of the national credit reporting system demands that credit reports be as accurate as possible, and ACB is committed to working with Congress, federal regulators, consumer reporting agencies, and others toward this goal. In our June 12th testimony, ACB supported empowering consumers to proactively manage their credit information by providing them access to a free annual credit report. Such access is already available to citizens of my home state of New Jersey, as well as Colorado, Georgia, Maryland, Massachusetts and Vermont. We fully support Section 501 of the FACT Act allowing all Americans access to this important empowerment tool. ACB also supports Section 502 that provides consumers with information on how a credit score is derived, and how their credit score may be improved.

We recognize that these consumer empowerment tools come with a cost that will eventually be distributed among all parties in the credit granting process. Nonetheless, ACB believes these costs will be outweighed by a more accurate national credit reporting system and increased consumer trust in the integrity of the system.

Effective Date

While it is critically important that the uniform national consumer protection standards in Title I be effective immediately, ACB urges the committee to provide adequate time for CRAs and the financial services industry to adopt procedures to comply with the FACT Act. For those sections of the FACT Act that do not have a defined effective date, ACB suggests that compliance be required one year following the issuance of any applicable final regulation. In those sections where no regulation is required, the effective date should be one year from date of enactment.

Other Potential Issues

While ACB urges passage of the FACT Act on an expedited basis, we are aware that other issues may arise during consideration of this critical legislation. Given that the FCRA's uniform national standards for consumer protections are scheduled to expire by the end of this year, we sincerely hope that consideration of other issues will not slow down or threaten the passage of this legislation. We applaud the committee for creating a narrowly focused bill that targets solely the FCRA and issues germane to the House Financial Services Committee's jurisdiction in order to avoid possible multi-committee referral that could potentially delay passage of this critical legislation.

One issue the committee will likely consider is an amendment previously offered by Representative Gary Ackermann requiring financial institutions to notify a customer every time it furnishes negative information to a consumer reporting agency.

Like most community banks, Rahway Savings provides information to each of the three major credit-reporting companies monthly via a data tape produced by our technology service provider. This monthly submission of credit account information contains

thousands of activity and status records on all of our customers regardless of their account status. Information found in these credit account records includes key account dates, account balance, payment status, loan type and other basic credit information. This information is submitted without any analysis or conclusion.

As previously discussed in our June 12 testimony, we have significant concerns about the impact of this amendment would have on paperwork burden, operational costs, and the continuing commitment of creditors to furnish accurate information essential to an effective credit system. ACB and other representatives from the financial services industry continue to work with Representative Ackermann and others on the Committee to find reasonable compromises to resolve concerns on both sides.

We believe that the FACT provisions that empower consumers to better manage their credit by providing free annual credit reports and the threat of stronger penalties on both users of credit reports and furnishers of credit reporting data represent an effective means to address the concerns raised by Representative Ackerman. Moreover, ongoing financial literacy efforts being conducted by the banking regulators, the FTC, and others will serve to educate consumers of how their credit rating is established.

Conclusion

Community banks are wholly dependent on the trust of our customers, and this trust represents our most valuable asset. As such, we take extraordinary care to ensure that consumer financial information is safeguarded. At the same time, community banks depend on our ability to use the information we receive from our customers to deliver the financial services they need.

ACB believes that the twin goals of preserving customer trust and responsibly using customer information are mutually attainable and must be pursued together. We believe that federal law must continue to strike the appropriate balance of protecting consumers and properly regulating the flow of financial information from a financial institution to affiliates and other third parties.

ACB believes that H.R. 2622, the FACT Act, meets this critical standard. We commend Subcommittee Chairman Bachus and the bipartisan coalition of cosponsors of this legislation for crafting a fair, balanced, and effective bill to improve the FCRA and our nation's credit system. We strongly endorse this legislation and urge the Committee and the 108th Congress to pass this measure expeditiously.

Again, thank you for this opportunity to testify on behalf of America's Community bankers. I look forward to any questions you may have.